

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TYE G. CHAMP, JR.,

Plaintiff,

v.

SECRETARY OF CDCR, *et al.*,

Defendants.

Case No. 1:23-cv-0336-ADA-CDB (PC)

FINDINGS AND RECOMMENDATIONS  
TO DISMISS ACTION FOR FAILURE TO  
STATE A CLAIM

(Doc. 14)

**FOURTEEN (14) DAY DEADLINE**

Plaintiff Tye G. Champ, Jr., is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action filed under 42 U.S.C. § 1983. Following the Court's screening of Plaintiff's original complaint, on June 23, 2023, Plaintiff filed a first amended complaint alleging Defendants denied him a parole hearing in violation of Proposition 57. (Doc. 14.) Upon screening the first amended complaint ("FAC"), the Court finds the pleading fails to state a claim upon which relief can be granted and must be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i)–(ii) and 28 § 1915A(b)(1). The Court further finds the deficiencies in the FAC cannot be cured by amendment and therefore recommends dismissal of this action.

**I. SCREENING REQUIREMENT**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner raises claims that are

1 frivolous or malicious, fail to state a claim on which relief may be granted, or seeks monetary  
 2 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)–(iii); 28  
 3 U.S.C. § 1915A(b). The Court must dismiss a complaint if it lacks a cognizable legal theory or  
 4 fails to allege sufficient facts to support a cognizable legal theory. *O'Neal v. Price*, 531 F.3d  
 5 1146, 1151 (9th Cir. 2008) (citing *Vaden v. Summerhill*, 449 F.3d 1047, 1050 (9th Cir. 2006)).

6 **II. PLEADING REQUIREMENT**

7 **A. Federal Rule of Civil Procedure 8(a)**

8 A complaint must contain “a short and plain statement of the claim showing that the  
 9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Rule 8(a)’s simplified pleading standard  
 10 applies to all civil actions, with limited exceptions.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506,  
 11 513 (2002). The statement must give the defendant fair notice of the plaintiff’s claims and the  
 12 grounds supporting the claims. *Id.* at 512.

13 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of  
 14 a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*,  
 15 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff  
 16 must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its  
 17 face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570). Plausibility does not require probability, but it  
 18 requires more than the “sheer possibility” of a defendant’s liability. *Id.* (quoting *Twombly*, 550  
 19 U.S. at 556). A claim is plausible when the facts pleaded allow the court to make reasonable  
 20 inferences that the defendant is liable for wrongful conduct. *Id.* (quoting *Twombly*, 550 U.S. at  
 21 556). However, courts “are not required to indulge unwarranted inferences.” *Metzler Inv. GMBH*  
 22 v. *Corinthian Colls., Inc.*, 540 F.3d 1049, 1064 (9th Cir. 2008).

23 The Court construes pleadings of pro se prisoners liberally and affords them the benefit  
 24 of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citation omitted). This liberal  
 25 pleading standard applies to a plaintiff’s factual allegations but not to his legal theories. *Neitzke*  
 26 v. *Williams*, 490 U.S. 319, 330 n.9 (1989). Moreover, a liberal construction of the complaint may  
 27 not supply essential elements of a claim not pleaded by the plaintiff. *Brunsv. Nat'l Credit Union*  
 28 *Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997). The mere possibility of misconduct and facts

1 merely consistent with liability is insufficient to state a cognizable claim. *Iqbal*, 556 U.S. at 678;  
 2 *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). Vague and conclusory allegations  
 3 of official misconduct are insufficient to withstand a motion to dismiss. *Ivey v. Bd. of Regents of*  
 4 *Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

5 Dismissal of a pro se complaint without leave to amend is proper only if it is “absolutely  
 6 clear that no amendment can cure the defect.” *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir.  
 7 2015) (quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212–13 (9th Cir. 2012)); *see Cervantes v.*  
 8 *Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (“Although leave to amend  
 9 should be given freely, a district court may dismiss without leave where a plaintiff’s proposed  
 10 amendments would fail to cure the pleading deficiencies and amendment would be futile.”).

11 **B. Linkage and Causation**

12 Section 1983 provides a cause of action for the violation of constitutional or other federal  
 13 rights by persons acting under color of state law. *See* 42 U.S.C. § 1983. Section 1983 “is not  
 14 itself a source of substantive rights, but a method for vindicating federal rights elsewhere  
 15 conferred.” *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003) (quoting *Baker v. McCollan*,  
 16 443 U.S. 137, 144 n.3 (1979)).

17 To state a claim under section 1983, a plaintiff must show a causal connection or link  
 18 between the actions of the defendants and the deprivation alleged to have been suffered by the  
 19 plaintiff. *See Rizzo v. Goode*, 423 U.S. 362, 373–75 (1976). The Ninth Circuit has held that a  
 20 government actor may be liable under section 1983, if he performs an affirmative act, participates  
 21 in another’s affirmative acts, or fails to perform an act which he is legally required to do that  
 22 causes the prisoner to suffer a deprivation of rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir.  
 23 1978) (citing *Sims v. Adams*, 537 F.2d 829 (5th Cir. 1976)). In addition to direct participation, a  
 24 government actor may be liable for “setting in motion a series of acts by others which the actor  
 25 knows or reasonably should know would cause others to inflict the constitutional injury.”  
 26 *Preschooler II v. Clark Cnty. Sch. Bd. of Trustees*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting  
 27 *Johnson*, 588 F.2d at 743).

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1     **III. DISCUSSION**2       **A. Plaintiff's Allegations<sup>1</sup> and Claims**

3       In November 2016, California voters passed Proposition 57, which amended the  
 4       California Constitution to add section 32, the Public Safety and Rehabilitation Act of 2016.<sup>2</sup>  
 5       *Jones v. Allison*, 9 F.4th 1136, 1138 (9th Cir. 2021). This act provides in pertinent part: “Parole  
 6       Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison  
 7       shall be eligible for parole consideration after completing the full term for his or her primary  
 8       offense.” Cal. Const. art. 1, § 32. Section 32 provides eligible inmates an early parole  
 9       consideration hearing but not actual parole or early release. *Barnes v. Supreme Ct. Judges*, No.  
 10      2:21-cv-01649 JAM GGH P, 2021 WL 5240255, at \*1 (E.D. Cal. Oct. 21, 2021), *F.&R. adopted*,  
 11      2021 WL 5999673 (E.D. Cal. Dec. 20, 2021). Proposition 57 does not require or provide any  
 12      mechanism for state law prisoners to be resentenced by the courts in which they were convicted.  
 13      *Travers v. California*, 2018 WL 707546, at \*3 (N.D. Cal. Feb. 5, 2018).

14       Plaintiff is incarcerated at Avenal State Prison. Plaintiff is currently serving an  
 15      indeterminate term of 25 years to life pursuant to California’s three strikes law for a 2015  
 16      conviction for possession of a firearm by a felon, a nonviolent crime. (Doc. 14 at 10, 14.) In  
 17      1998, Plaintiff was convicted of voluntary manslaughter and sentenced to six years of  
 18      imprisonment.<sup>3</sup> (*Id.* at 21.) In 1993, Plaintiff was convicted of assault with attempt to rape, for  
 19      which he was required to register as a sex offender under Penal Code 290. (*Id.*) Plaintiff states  
 20      his current conviction is for a nonviolent felony, and he has committed the full term for his  
 21      primary offense. Therefore, Plaintiff contends he is eligible for parole consideration under Prop  
 22      57. (*Id.*)

23       Plaintiff asserts Defendants unlawfully denied him a “mandated” parole consideration  
 24      hearing as required by Proposition 57. (*Id.* at 10–11.) Specifically, Plaintiff alleges the Secretary

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25       <sup>1</sup> The Court accepts Plaintiff’s allegations in the complaint as true only for the purpose of the *sua  
 26       sponte* screening requirement under 28 U.S.C. § 1915.

27       <sup>2</sup> Courts have used “Proposition 57” and “section 32” interchangeably.

28       <sup>3</sup> Plaintiff alleges in the complaint he was convicted of voluntary manslaughter in “Feb, 27, 2027.”  
 (Doc. 10.) However, the abstract of judgment from this offense indicates Plaintiff was convicted on  
 October 16, 1998, and sentenced to six years. (*Id.* at 21.)

1 of CDCR is responsible for all prison operations and abused his authority by ignoring the will of  
 2 the voters under Proposition 57 by denying him a parole eligibility hearing. Plaintiff further  
 3 alleges the Secretary and Warden are responsible for enforcement of Proposition 57 and failed to  
 4 use their authority to correct unconstitutional violations. (*Id.* at 4, 11.) The Board of Parole  
 5 Hearing (“BPH”) Commissioners “are solely responsible under [Cal. Code Reg. tit. 15 §  
 6 2000(b)(1010)”] for the responsibility of any hearing, release, [etc.], they had the power to  
 7 change/correct the SECRETARY’S unla[w]ful use of power, in denying plaintiff his entitled  
 8 right to a BPH. . . . Plaintiff went from eligible to ineligible for parole.” (Doc. 14 at 11)  
 9 (alteration in original).

10 Plaintiff asserts he has a liberty interest in parole, and Defendants “effectively denied  
 11 plaintiff due process of law; when they purposefully, and with the opportunity to deliberate,  
 12 denied plaintiff his mandated right to a [hearing before the] BPH.” (*Id.*) As relief, Plaintiff seeks  
 13 declaratory judgment and punitive damages. (*Id.* at 8.)

14 **B. Proposition 57**

15 Proposition 57 amended the California Constitution to add section 32, the Public Safety  
 16 and Rehabilitation Act of 2016, which provides:

17 (a) The following provisions are hereby enacted to enhance public safety,  
 18 improve rehabilitation, and avoid the release of prisoners by federal court order,  
 notwithstanding anything in this article or any other provision of law:

19 (1) Parole Consideration: Any person convicted of a *nonviolent* felony  
 20 offense and sentenced to state prison shall be eligible for *parole consideration*  
 after completing the full term for his or her primary offense.

21 Cal. Const. art. 1, § 32 (emphasis added). Section 32(b) directs the California Department of  
 22 Corrections and Rehabilitation (“CDCR”) to “adopt regulations in furtherance of these  
 23 provisions.” Cal. Const. art I, § 32(b)).

24 Section 32 went into effect in 2017, and CDCR adopted emergency regulations defining a  
 25 nonviolent offender as an inmate “who is *not* (1) condemned, incarcerated for a term of life  
 26 without the possibility of parole, or incarcerated for a term of life with the possibility of parole;  
 27 (2) serving a term of incarceration for a violent felony within the meaning of Penal Code section  
 28 667.5, subdivision (c); or (3) ‘[c]onvicted of a sexual offense that requires registration as a sex

1 offender under Penal Code section 290.” *All. for Const. Sex Offense Laws v. Dep’t of Corr. &*  
2 *Rehab.*, 45 Cal. App. 5th 225, 229 (Cal. Ct. App. Feb. 13, 2020) (alteration in original). The  
3 2017 regulations’ definition of “nonviolent offender” excluded all inmates serving indeterminate  
4 sentences, and thus excluded third-strike offenders from parole consideration under section 32,  
5 regardless of whether their third-strike felony was categorized as “serious” or “violent.” *Jones v.*  
6 *Diaz*, 2020 WL 10816217, at \*2 (N.D. Cal. Mar. 30, 2020), *aff’d sub nom. Jones v. Allison*, 9  
7 F.4th 1136 (9th Cir. 2021).

8 In May 2018, CDCR issued final regulations updating the definition of “nonviolent  
9 offender” as “any inmate who is *not*: (1) condemned to death; (2) currently incarcerated for a  
10 term of life without the possibility of parole; (3) currently serving a term of incarceration for a  
11 ‘violent felony’ as denied by Penal Code 667.5, subdivision (c); (4) currently serving a term of  
12 incarceration for a nonviolent felony offense after completing a concurrent determinate term for  
13 a ‘violent felony.’” *Alliance*, 45 Cal. App. 5th at 230 (alteration in original). The 2018  
14 regulations, like the 2017 regulations, excluded all three-strike offenders from parole  
15 consideration, including those whose third-strike felony was nonviolent. *Jones*, 2020 WL  
16 10816217, at \*2. The final regulation specifically excluded inmates “convicted of a sexual  
17 offense that currently requires or will require registration as a sex offender under the Sex  
18 Offender Registration Act, codified in sections 290 through 290.024 of the Penal Code.” Cal.  
19 Code Regs. tit. 15, § 3491(a) & (b)(3). The CDCR’s rationale behind the regulations was that,  
20 although registrable sex offenses were no longer part of the definition of “nonviolent offender,”  
21 considerations of “[p]ublic safety requires that sex offenders be excluded from nonviolent parole  
22 consideration.” *Id.*

23 In September 2018, the California Second District Court of Appeal struck down the 2018  
24 regulations, concluding they were inconsistent with the text and intent of section 32(a) for early  
25 parole eligibility consideration for nonviolent prisoners. *In re Edwards*, 26 Cal. App. 5th 1186  
26 (Cal. Ct. App. Sept. 7, 2018). The *Edwards* court determined that “CDCR’s adopted regulations  
27 impermissibly circumscribe eligibility for Proposition 57 parole by barring relief for [the  
28 plaintiff] and other similarly situated inmates serving Three Strikes sentences for nonviolent

1 offenses.” *Id.* at 1192. The Court of Appeal ordered CDCR to treat as void and repeal offending  
 2 portions of section 3491(b). *Id.*

3 In response to the *Edwards* decision, in January 2019, CDCR amended the regulations to  
 4 include, for early parole consideration, state prisoners serving indeterminate sentences for  
 5 nonviolent third-strike offenses. *See Jones*, 9 F.4th at 1138 (citing Cal. Code Regs. tit. 15, §  
 6 2449.30 (2019)). Subsection 2449.30(a) provides a list of offenses specifically excluded from  
 7 eligibility. Subsection 2449(b) provides: “Notwithstanding subsection (a), an ‘indeterminately-  
 8 sentenced nonviolent offender’ includes an inmate who has completed a determinate term of  
 9 incarceration for a ‘violent felony’ and is currently serving an indeterminate term for an in-prison  
 10 offense that is not a ‘violent felony.’” Cal. Code Regs. tit. 15, § 2449.30(b).<sup>4</sup>

11 In 2020, the California Supreme Court considered whether CDCR could, consistent with  
 12 section 32, exclude from early parole consideration registerable sex offenders who were  
 13 convicted of nonviolent sex offenses. *In re Gadlin*, 10 Cal. 5th 915, 924 (2020). The court held  
 14 that (1) “nonviolent offender parole eligibility must be based on an inmate’s current conviction”  
 15 and (2) “an inmate may not be excluded from nonviolent offender parole consideration based on  
 16 a current conviction for a registrable felony offense that the Department’s regulations have  
 17 defined as nonviolent.” *Id.* at 943. The Court directed CDCR to “void and repeal” Cal. Code  
 18 Regs. § 3491(b). *Id.*

19 In this case, Plaintiff has alleged he is a nonviolent offender serving an indeterminate  
 20 term based on his current conviction for possessing a firearm as a felon, and he has completed  
 21 the determinate term for his primary conviction, which was the violent crime of assault with  
 22 intent to commit rape. Therefore, Plaintiff has sufficiently alleged eligibility for early parole  
 23 consideration under section 32.

24 **C. Due Process**

25 The Fourteenth Amendment protects persons from deprivations of life, liberty, or property  
 26 without due process of law. U.S. Const. amend. XIV. Protected liberty interests may arise both  
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28 <sup>4</sup> Plaintiff’s prior offenses, voluntary manslaughter and assault with intent to commit rape, are  
 “violent felonies” as defined by section 667.5(c)(1), (15) of the California Penal Code.

1 from the Constitution or from state law. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) (citations  
 2 omitted). “A state may create a liberty interest through statutes, prison regulations, and policies.”  
 3 *Chappell v. Mandeville*, 706 F.3d 1052, 1063 (9th Cir. 2013) (citation omitted). When a protected  
 4 liberty interest is implicated, the Due Process Clause protects individuals from the deprivation of  
 5 liberty without the procedural protections to which he is entitled under the law. *Wilkinson v.*  
 6 *Austin*, 545 U.S. 209, 221 (2005). The amount of process or specific procedures required vary by  
 7 context and the particular interest at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

8       The Due Process Clause does not provide any right “to be conditionally released before  
 9 the expiration of a valid sentence, and the States are under no duty to offer parole to their  
 10 prisoners.” *Swarthout v. Cooke*, 562 U.S. 216, 220 (2011). When a state enacts a statutory scheme  
 11 allowing parole, however, the state creates a liberty interest and “the Due Process Clause requires  
 12 fair procedures for its vindication.” *Id.* The existence of a liberty interest created by state law is  
 13 determined by focusing on the nature of the deprivation. *Sandin v. Connor*, 515 U.S. 472, 481–84  
 14 (1995). Liberty interests created by state law are generally limited to freedom from restraint  
 15 which “imposes atypical and significant hardship on the inmate in relation to the ordinary  
 16 incidents of prison life.” *Id.* at 484.

17       The Supreme Court has characterized as “reasonable” the Ninth Circuit’s finding that  
 18 California law creates a liberty interest in parole protected by the Fourteenth Amendment’s Due  
 19 Process Clause. *See Bisel v. Kernan*, No. 1:18-cv-00090-DAD-JLT (PC), 2018 WL 11294697, at  
 20 \*9 (E.D. Cal. Aug. 17, 2018) (citing *Swarthout*, 562 U.S. at 222); *Greenholtz v. Inmates of Neb.*  
 21 *Penal & Corr. Complex*, 442 U.S. 1, 12 (1979)).<sup>5</sup> Under Proposition 57, the liberty interest at  
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23       <sup>5</sup> In a number of cases asserting claims based on Proposition 57, federal courts have found that the  
 24 prisoner-plaintiffs failed to allege a cognizable claim under section 1983 because the crux of their  
 25 complaints concerned an alleged violation of state law. *Williams v. Cal. Dep’t of Corr.*, No. 1:19-cv-  
 26 00250-LJO-GSA PC, 2019 WL 6918206, at \*5 (E.D. Cal. Dec. 19, 2019) (citing *Ramos v. Spearman*,  
 27 2019 WL 4571943, at \*2 (E.D. Cal. Sept. 20, 2019)); *Herrera v. Cal. State Superior Cts.*, No. 1:17-cv-  
 00386-AWI-BAM, 2018 WL 400320 (E.D. Cal. Jan. 12, 2018); *Daniels v. CDCR*, Case No. 1:17-cv-  
 01510-AWI-BAM, 2018 WL 489155 (E.D. Cal. Jan. 19, 2018); *Galen v. Cnty. of Los Angeles*, 477 F.3d  
 652, 662 (9th Cir. 2007) (“Section 1983 requires [plaintiff] to demonstrate a violation of federal law, not  
 state law.”)). “The violation of state regulations, rules and policies of the CDCR, or other state law is not  
 sufficient to state a claim for relief under § 1983.” *Herrera*, 2018 WL 400320, at \*4. However, the  
 decisions in those cases did not acknowledge that a state created liberty interest in parole under California  
 law has been recognized. *See Bisel*, 2018 WL 11294697, at \*9.

1 issue is receiving parole consideration when the standards for parole have been met, and prisoners  
 2 are entitled to minimal procedures adequate to protect that interest. *See Swarthout*, 562 U.S. at  
 3 220. However, the procedures required for parole hearings under the Due Process Clause are  
 4 merely an opportunity to be heard and a statement of the reasons for any denial. *Id.* (citing  
 5 *Greenholtz*, 442 U.S. at 12); *Miller v. Or. Bd. of Parole & Post-Prison Supervision*, 642 F.3d  
 6 711, 716 (9th Cir. 2011) (“The Supreme Court held in *Cooke* that in the context of parole  
 7 eligibility decisions the due process right is procedural, and entitles a prisoner to nothing more  
 8 than a fair hearing and a statement of reasons for a parole board’s decision . . . .”). Proposition 57  
 9 provides eligible inmates for early *consideration* for parole *but not* actual parole or early release.

10 Thus, if properly linked to named defendants, factual allegations showing that  
 11 one was convicted of non-violent felonies, that the full term for the primary  
 12 offense(s) (exclusive of enhancement, consecutive sentences, or alternative  
 13 sentencing) have run, and that he has not received parole consideration as dictated  
 by Proposition 57 despite repeated requests may state a cognizable due process  
 claim.

14 *Bisel*, 2018 WL 11294697, at \*10. Having determined that Plaintiff is eligible for early parole  
 15 consideration under section 32, the Court must determine whether Plaintiff received a hearing a  
 16 statement of reasons for the parole board’s decision. Plaintiff alleges that he did not have the  
 17 opportunity to appear and be heard by the BPH, and he did not receive notice of the BPR’s  
 18 decision as required by Proposition 57. (Doc. 14 at 7.)

19 The Court has reviewed the BPH’s past and future actions taken on Plaintiff’s requests for  
 20 parole.<sup>6</sup> These records are not attached to the complaint. However, the Court takes judicial notice  
 21 of this document, as its authenticity is not questioned. *See Valles v. Cal. Dep’t of Cor. and*  
 22 *Rehab.*, No. 2:20-cv-1905 AC P, 2021 WL 2292616, at \*2 n.2 (E.D. Cal. June 4, 2021) (taking  
 23 judicial notice of plaintiff’s parole review information available through CDCR’s inmate  
 24 information page) (citing Fed. R. Evid. 201; *City of Sausalito v. O’Neill*, 386 F.3d 1186, 1223 n.2  
 25 (9th Cir. 2004) (“We may take judicial notice of a record of a state agency not subject to  
 26 reasonable dispute.”)). The record of Plaintiff’s parole activity indicates he had parole suitability  
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28 <sup>6</sup> CDCR Inmate Bd. Actions, <https://inmatelocator.cdcr.ca.gov/Details.aspx?ID=AY9500> (last visited Aug. 9, 2023).

1 hearings on January 5, 2021; June 15, 2022; and July 21, 2023. The hearings in 2021 and 2022  
 2 occurred before Plaintiff filed this action on March 3, 2023.<sup>7</sup> (See Doc. 1.) Plaintiff did not  
 3 disclose these parole hearings in either the original complaint or the FAC. Additionally, Plaintiff  
 4 is scheduled for a parole eligibility hearing in December 2026. Contrary to his allegations,  
 5 Plaintiff's inmate record indicates that he did and continues to receive parole eligibility hearings.  
 6 Thus, it is plain Plaintiff has received the "minimal procedures" necessary to adequately protect  
 7 his liberty interest in receiving parole consideration. *See Swarthout*, 562 U.S. at 220. Therefore,  
 8 Plaintiff's due process claim is moot, and this Court is without jurisdiction to entertain this action  
 9 further. *E.g.*, *Johnson v. Cal. Dep't of Cor. and Rehab.*, No. 1:20-cv-00119-GSA-PC, 2021 WL  
 10 5040361, at \*5 (E.D. Cal. Oct. 29, 2021) (dismissing complaint as moot because "[t]here is no  
 11 reasonable expectation that the CDCR will defy the California Supreme Court and continue to  
 12 apply the voided and repealed regulations") (citing cases); *Rodriguez v. Anderson*, 2021 WL  
 13 2343346, at \*6-7 (C.D. Cal. Mar. 31, 2021) (same).

14 Dismissal of a pro se complaint without leave to amend is proper only if it is "absolutely  
 15 clear that no amendment can cure the defect." *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir.  
 16 2015) (quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012)); *see Cervantes v.*  
 17 *Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) ("Although leave to amend  
 18 should be given freely, a district court may dismiss without leave where a plaintiff's proposed  
 19 amendments would fail to cure the pleading deficiencies and amendment would be futile.").

20 The Court finds that the deficiencies outlined above are not capable of being cured by  
 21 amendment, and therefore further leave to amend is futile and should not be granted. 28 U.S.C. §  
 22 1915(e)(2)(B)(ii); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Therefore, this action  
 23 should be dismissed with prejudice.

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28       <sup>7</sup> On August 24, 2020, "[a] court ordered the board to conduct a new parole suitability hearing." This indicates that there was a prior parole suitability hearing." *Id.*

## IV. CONCLUSION

Accordingly, it is hereby RECOMMENDED:

1. The Court dismiss this case without leave to amend for failure to state a claim;  
and
2. The Clerk of Court be DIRECTED to close this case.

6 These Findings and Recommendations will be submitted to the United States District  
7 Judge assigned to this case pursuant to 28 U.S.C. § 636(b)(1). **Within fourteen (14) days** from  
8 the date of service of these Findings and Recommendations, Plaintiff may file written objections  
9 with the Court. The document should be captioned, “Objections to Magistrate Judge’s Findings  
10 and Recommendations.” Plaintiff’s failure to file objections within the specified time may result  
11 in waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing  
12 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **August 9, 2023**

  
\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE